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Human Trafficking



THE 694 ACT OF THE PARLIAMENT OF THE REPUBLIC OF GHANA ENTITLED HUMAN TRAFFICKING ACT, 2005
AN ACT for the prevention,

reduction and punishment of human trafficking, for the rehabilitation and reintegration of trafficked persons and its related matters.

DATE OF ASSENT: 5th December, 2005

ENACTED by the then President and Parliament:

Prohibition and offences relating to trafficking

Meaning of trafficking

Human trafficking means the recruitment, transportation, transfer, harbouring, trading or receipt of persons within and across national borders by the use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or giving or receiving payments and benefits to achieve consent.

Exploitation shall include at the minimum, induced prostitution and other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Placement for sale, bonded placement, temporary placement, placement as service where exploitation by someone else is the motivating factor shall also constitute trafficking. Where children are trafficked, the consent of the child, parents or guardian of the child cannot be used as a defence in prosecution under this Act, regardless of whether or not there is evidence of abuse of power, fraud or deception on the part of the trafficker or whether the vulnerability of the child was taken advantage of.

Prohibition of Trafficking

A person shall not traffic another person within the interpretation of section 1 or act as an intermediary for the trafficking of a person. A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for a term of not less than five years.

For purposes of this section, an intermediary is someone who participates in or is concerned with any aspect of trafficking under this Act who may or may not be known to the family of the trafficked person.

To be concerned with an aspect of trafficking in this Act means to send to, take to, consent to the taking to or to receive at any place any person for the purposes of trafficking, or to enter into an agreement whether written or oral, to subject any party to the agreement or subject any other person to trafficking.

Provision of Trafficked Person Prohibited

A person who provides another person for purposes of trafficking commits an offence even where the person is a parent. A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years.

Use of Trafficked Persons Prohibited

A person who uses a trafficked person commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years.

Conveyance in Trafficking

Means of conveyance in trafficking includes use of public transport and other forms of transport such as conveyance by land, water or air.

Duty to Inform

6. (1) A person with information about trafficking shall inform the police, or may inform the Commission of Human Rights and Administrative Justice, (ii) the Department of Social Welfare, the Legal Aid Board, or a reputable Civil Society Organisation. A person who fails to inform the police commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units

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or a term of imprisonment not less than twelve months or to both.

Special Mitigating Factors

Where a court in sentencing a person convicted under section 3 or 4 finds that there are special circumstances related to the offence or the offender, and that the imposition of the minimum sentence in respect of the offence is harsh, it may sentence the accused to a lesser term of imprisonment in addition to a fine of not less than five hundred penalty units.

Application

A person is liable to be tried and punished in Ghana for trafficking if the person does an act which if done within the jurisdiction of the courts in this country would have constituted the offence of trafficking.

Complaint and arrest

Filing of complaint to police

A victim of trafficking or a person with information about trafficking may file a complaint with the police or other security services at the place where the offender resides, the victim resides, the trafficking occurred or is occurring, or where the victim is residing temporarily, if the victim has left his or her normal place of abode. A child may be assisted by a friend, concerned neighbour to file a complaint on trafficking.

Despite subsection (1), a complaint about trafficking shall be filed by a social welfare officer, probation officer, health care provider, teacher, district labour officer or any other person where the intervention is in the best interest of the victim. Where a victim is for any reason unable to file a complaint personally, a member of the victim's family or any person with knowledge of the offence may file a complaint on behalf of the victim. Where a person who could have been a complainant under this Act has died, the complaint may be made by the next of kin or a person with knowledge of the offence.

Police Assistance

A police officer shall respond to a request by any person for assistance from trafficking and shall offer protection in a case of alleged trafficking even where the person reporting is not the victim of the trafficking. A police officer who fails to respond to a request for assistance shall on a report filed by the complainant to a superior officer be subject to Police Service disciplinary procedure.

Receipt of Complaint by Police

Where a police officer receives a complaint, the officer shall take a statement from the parties and witnesses, record the complaint in detail and provide a copy of the written report to the victim, assist the victim to obtain medical treatment where necessary, assist the victim to a place of safety if the victim expresses concern about safety, and inform the victim of his or her rights and any basic material support which may be available to assist the victim. A police officer shall take a statement from a child in the presence of a next friend or a guardian.

Arrest by Police

A police officer may arrest a person for trafficking with a warrant issued in pursuance of this Act. A police officer may arrest a person for trafficking without a warrant where an act of trafficking is committed in the presence of the officer, the police officer is obstructed by the person in the execution of police duties, or the person has escaped or attempts to escape from lawful custody.

A police officer may arrest without warrant upon reasonable grounds of suspicion where a person has committed an offence of trafficking, is about to commit an offence of trafficking and there is no other way to prevent the commission of the offence, or is wilfully obstructing the police officer in the execution of police duties.

Arrest by Private Person Without Warrant

A private person may arrest a person without warrant if the person commits an act of trafficking in the presence of the private person. A private person may arrest a person without warrant where the private person has reasonable suspicion that the person has committed an offence of trafficking. A private person who effects an arrest shall immediately hand over the person to the police.

Rescue of Trafficked Persons

An authorised officer shall be responsible for the rescue of a trafficked person which may be carried out in collaboration with an Organisation. Despite subsection (1) any government agency may rescue a trafficked person.

Temporary Care of Trafficked Person

15. The Ministry shall provide temporary basic material support for the care and protection of a rescued victim of trafficking. Despite subsection (1), a District Assembly shall be resourced from the Fund to protect the welfare of a trafficked person within its area of authority in consultation with the relevant government agencies and Organisations in the District

Counselling of Trafficked Person

The Ministry shall ensure the provision of counselling services for the victim of trafficking to assist with the rehabilitation and reintegration of a trafficked person.

Tracing of Family of Trafficked Person

The Ministry shall be assisted by the police, an Organisation and any other person to trace the family of a trafficked person. The views of the trafficked person shall be taken into consideration in connection with family reunification. A person who has information which may assist with the tracing of the family of a trafficked person

shall provide the information to the Department, the police or an Organisation. The Ministry may be assisted by an Organisation or any other person to trace the family of a trafficked person.

Rehabilitation of Trafficked Person

18. The Ministry shall assist to provide a rescued victim of trafficking with employable skills and employment opportunities. The Ministry shall assist the victim with start up capital to ensure the survival of the trafficked person. Trafficked victims may receive financial assistance from the Fund.

The best interest of the child shall be paramount in assistance given to the rescue, rehabilitation and re-integration of a trafficked child. Compensation A person convicted of the offence of trafficking shall be ordered by the court to pay compensation to the victim of the trafficking.

A person who causes injury to a person in pursuit of trafficking shall be ordered by the court to pay compensation to the injured person. The payment of compensation shall be in addition to any other punishment.

Establishment of Fund

20. There is established by this Act a Fund.

- Sources of money for the Fund. The moneys for the Fund include voluntary contributions to the Fund from individuals, Organisations and the private sector,
- The amount of money that Parliament may approve for payment into the Fund,
- Grants from bilateral and multilateral sources,
- Money from any other source approved by the Minister responsible for Finance.

Objective of the Fund

The moneys of the Fund shall be applied as follows: towards the basic material support of victims of trafficking; for the skills training of victims of trafficking; for tracing the families of victims of trafficking; for any matter connected with the rescue, rehabilitation and reintegration of victims of trafficking in their best interest, towards the construction of reception shelters for trafficked persons in the districts; and for training and capacity building to persons connected with rescue, rehabilitation and reintegration.

Management of the Fund

The Fund shall be managed by the Ministry. Moneys for the Fund shall be paid into a bank account opened for the purpose by the Ministry with the approval of the Minister for Finance.

Payment from the Fund

Moneys issued from the Fund shall be by cheque signed by the accountant of the Ministry and any two of the following: the Chief Director of the Ministry; the secretary of the Management Board established under section 28, and one other member of the Management Board nominated by the members of the Management Board. The Management Board shall develop guidelines for disbursements from the Fund.

Accounts and Audit

The Ministry shall keep books of account of the Fund and proper records in relation to them, in the form approved by the Auditor-General. The Ministry shall submit the accounts of the Fund to the Auditor-General for audit within three months after the end of the financial year.

The Auditor-General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister. Financial year, The financial year for the Fund shall be the same as the financial year of the Government.

Annual Report

The Minister shall within one month after the receipt of the audit report submit an annual report covering the activities and the operations of the Fund for the year to which the report relates.

The annual report shall include

- The audited accounts of the Fund and the Auditor-General's report on the accounts of the Fund, and
- Other information that the Minister may consider necessary.
- The Minister shall within one month after the receipt of the annual report submit the report to Parliament with a statement that the Minister considers necessary.

Management Board

Establishment of the Management Board
There is established by this Act a Management Board.

Composition of the Management Board

The Management Board shall consist of the chairperson who shall be the Minister or Deputy Minister, one representative of the Attorney-General not below the level of Principal State Attorney, one representative of the Ministry of Local Government not below the level of a Deputy Director, one representative of the Ministry of Interior not below the level of a Deputy Director, one representative of the Ministry of Health not below the level of a Deputy Director, one representative of the Ministry of Education not below the level of a Deputy Director, one representative of the

Ministry who shall be the secretary, one representative of the Ghana Journalists Association, one representative each from the Police Service, Immigration Service, Customs, Excise and Preventive Service, and the Office of the National Security Coordinator.

The Director of Social Welfare, (k) one representative of the Labour Department not below the level of a deputy chief labour officer, (l) one person from the private sector nominated by the Minister, and (m) three other persons one of whom is a woman. The members of the Management Board other than the ex-officio members shall be nominated by the institution concerned. The members of the Management Board shall be appointed by the Minister with the authority of the President and shall be committed to combating human trafficking.

Functions of the Management Board

The Management Board shall, make recommendations for a national plan of action against human trafficking, monitor and report on the progress of the national plan of action through the Minister to the Economic Community of West African States Secretariat, advise the Minister on policy matters under this Act, provide assistance on the investigation and prosecution of trafficking cases.

Propose and promote strategies to prevent and combat trafficking in persons, liaise with government agencies and Organisations to promote the rehabilitation and reintegration of victims of trafficking, prepare guidelines for disbursements from the Fund, conduct research on international and regional developments and standards on trafficking in persons, and deal with any matter concerned with human trafficking.

Meetings of the Management Board

The Management Board shall meet at the Ministry at least once every three months. The quorum at a meeting of the Management Board is five members. The chairperson shall convene and preside at meetings of the Management Board and in the absence of the chairperson a member of the Management Board elected by the members present from among their number shall preside. Matters before the Management Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

The Management Board may co-opt a person to attend its meeting but the co-opted person may not vote on a matter for decision of the Management Board. Subject to this section, the Management Board may determine the procedure for its meetings.

Secretariat of the Management Board

The Management Board shall have a secretariat. The secretariat of the Management Board shall be at the Ministry which shall provide the facilities and personnel for the performance of the functions of the Management Board.

Allowances

Members of the Management Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Miscellaneous

Continued stay of illegal immigrants

Despite the provisions in section 21 of the Immigration Act, 2000 (Act 573), on the removal of an illegal immigrant, a trafficked person who is in this country unlawfully, may remain in this country throughout the period of a legal investigation and prosecution of a trafficker and the Management Board shall make arrangements for the repatriation of the trafficked person upon completion of the legal process. If it is in the best interest of the trafficked person, the trafficked person may be allowed to remain in this country after the legal process with the approval of the Minister of Interior and the person shall stay in a shelter provided by the Ministry where the person shall receive basic material support until resettled in this country.

A trafficked person may be repatriated to the country of origin of the trafficked person upon the conviction of a trafficker and shall stay in a reception centre provided by the Ministry where basic material support shall be provided until the repatriation.

Extradition of Trafficking Offender

Subject to the Extradition Act, 1960 (Act 22), a non-citizen convicted of trafficking in persons under a provision of this Act shall be extradited from the Republic.

Power of police under Act 30 and Act 560

The provisions of this Act in so far as they relate to the powers of a police officer, shall be in addition to the powers of a police officer under the Criminal Procedure Code, 1960 (Act 30) and the Children's Act, 1998 (Act 560).

Reference to Family Tribunal

Where there is a need for care and protection for a child victim of trafficking, the court dealing with an offence committed under this Act, may refer matters concerned with temporary custody of the trafficked child to a Family Tribunal. A matter connected with trafficking that relates to a child and the rights of the child shall be referred to a Family Tribunal under the Children's Act, 1998 (Act 560).

No Publication on

A person shall not publish a report of human trafficking proceedings under this Act which may reveal the identity of the trafficked person except with the leave of the court. A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or a term of imprisonment not exceeding twelve months or to both.

Criminal Charges and Civil Claim

The institution of a criminal charge arising from acts of trafficking is in addition to and does not affect the rights of a victim to pursue a civil claim for damages.

Confiscation of property

Where there is evidence that movable or immovable property has been acquired by a trafficker as a result of gains from human trafficking activity, the court shall order the confiscation of the property.

The court may make an order that it considers appropriate in connection with the confiscated property and may direct that the proceeds of the confiscated property be paid into the Fund.

Regulations

The Minister may, on the recommendation of the Management Board, by legislative instrument make Regulations on preventive measures to be taken by District Assemblies against human trafficking; the training for the personnel of the security services to combat trafficking; the skills training, care and protection of victims of trafficking; the collection of data and exchange of information on trafficking in persons; the rescue, rehabilitation and reintegration of trafficked persons; any other matter for the effective implementation of this Act; special mitigating guidelines provided in respect of the provisions of section 7; and (h) skills training to include formal education for young victims.

Interpretation

In this Act unless the context otherwise requires "abduction" has the meaning attributed to it in the Criminal Code, 1960 (Act 29); "authorised officer" means an immigration officer, a police officer or any other public officer authorised by the Ministry of Interior to implement any provision of this Act;

Basic material support" includes education, health care, shelter, counselling and nutritional requirements; "bonded placement" includes placement by a trafficker of a person for exploitative purposes with a promise of subsequent payment to the trafficker for the placement of the trafficked person by the user of the trafficked person and the placement of a trafficked person to offset a debt already owed by the trafficker or another person; "care and protection" has the same meaning as basic material support;

Child" means a person below eighteen years; "coercion" means a threat of serious injury to or physical restraint against a person, a scheme, plan or pattern intended to cause a person to believe that failure to perform an act will result in serious injury to or physical restraint of a person; "court" means court of competent jurisdiction;

District Assembly" includes a Metropolitan Assembly and Municipal Assembly; "foreign authority" means a person designated by a foreign government as a competent authority to act on behalf of a foreign government for purposes of this Act; "Fund" means the Fund established under section 20;

Government" means the authority by which the executive authority of Ghana is duly exercised; government agency" means an establishment in this country by virtue of an enactment and an establishment approved by the Ministry; "guardian" means a social welfare officer, probation officer, health care provider, leader, district labour officer, or any other person who intervenes in the best interest of a child; "injury" includes physical, emotional and psychological hurt;

"Organisation" means Civil Society Organisation which includes community based organisations, Non-Governmental Organisations, Traditional Authorities, religious bodies and associations; "Management Board" means Management Board; "Minister" means Minister responsible for Women and Children's Affairs;

"Ministry" means the Ministry responsible for Women and Children's Affairs; "next friend" means a person who intervenes to assist a child in a legal action; "organs" include a part of the human body which can be removed and used to sustain life for any purpose; "place of safety" means premises where the welfare of a victim of trafficking is assured;

placement as service" means the placement of a person by a trafficker for exploitative purposes where the service of that person is not remunerated; "police officer" includes an officer from another security service, "private sector" means the part of the economy which is not funded by the Government or from moneys provided by Parliament; "security services" includes the Police, Customs, Excise and Preventive Service, the Immigration Service and Bureau of National Investigation; "servitude" means involuntary bondage;

"social welfare officer" includes a probation officer; "temporary placement" means the transfer of a trafficked person for a limited period for exploitative purposes; "trafficked person" means a victim of trafficking; and "trafficking" has the meaning provided under

section 1;

Date of Gazette notification: 9th December, 2005.